IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
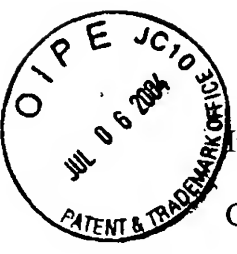## BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re patent of: Patent Application No.: 10/039,303

Charles F. Butler   Art Unit: 3764

For: SIMULATED WAVE MASSAGE   Filing Date: January 2, 2002

Examiner: Glenn Richman

APPLICANT'S REPLY BRIEF

This is in response to the Examiner's Answer mailed May 5, 2004 with regard to

the above subject appeal.

A-Section 112 Rejection

The examiner appears to have not withdrawn the Section 112 rejection of claims

1-8 as set forth in the Office Action of August 7, 2003. The present examiner as well as

the former examiner does not appear to understand the principle of the invention. This

principle was succinctly explained on pages 3 and 4 of the applicant's appeal brief.

There was no response by the examiner in his answer to this explanation.

B-Rejection under Section 102

This rejection relates to the alleged anticipation by the Murtonen Patent. The

examiner, in his answer, ignores the teaching of the Murtonen reference as explained on

page 6 of the applicant's brief. Murtonen clearly indicates in column 1, lines 55-60 that

varying frequency was not something desirable, thus teaching away from the applicant's

invention. Applicant's claim 1 requires the use of a "minimum of one transducer." As

explained on page 4 of the Applicant's brief, this means that the Applicant's invention

must operate while using only one transducer. Multiple transducers may optionally be

used, but the invention must be operable with a single transducer. The invention in the Murtonen reference requires at least two transducers, and is not operable with a single transducer. Thus there is no anticipation, nor would the invention be obvious. The examiner is misinterpreting the meaning of "minimum".

With regard to the continuous variation or scanning of the frequency required in the applicant's claims, the examiner takes the position in his Answer that Murtonen "clearly discloses varying the frequency, see column col. 2, lines 29-51." The Applicant's claims call for scanning or a continuous variation, not merely a variation in the frequency such as used by Murtonen. Murtonen slightly varies the frequency in order to find that particular frequency corresponding to the resonant frequency of the targeted body part. Thus, Murtonen simply tunes his frequency to substantially equal the resonant frequency of the body part. With regard to claims 7 and 8, the Examiner takes the position that Murtonen discloses a repeated rotary effect advancing in a wave-like matter "which reads on the claimed 'scanned signals at different areas of the body.'" This argument is simply not understood. There is no continuous variation or scanning of frequencies in Murtonen.
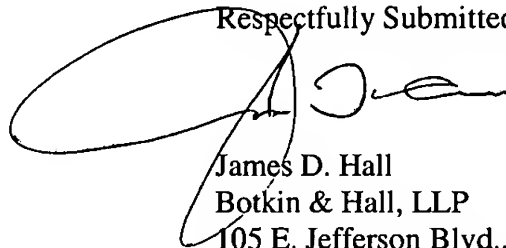
With regard to the disclosure in the Skille reference, the examiner in his answer summarily states that since Skille discloses a frequency range from 30 to 120hz, which is modulated as a function of the music being played, and which function by the way is a requirement in Skille, reads on "the scanning movement and the frequency variations claimed." This frequency range referred to in column 3, lines 12-19, refers to a single

chosen frequency within this range which is modulated by amplitude changes, not any

scanning or continuous variation. Further, the examiner summarily uses the term

"scanned" without discussing the normal definition advanced by the applicant in his brief

or even what the examiner considers the term to mean.

C – Section 103 Rejections

The examiner's comments regarding Murtonen's relevance to claim 4 are quite

adequately countered in the applicant's brief on page 9.

Respectfully Submitted,

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2 July 04

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